

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HOLTSINGER,

Plaintiff,

No. CIV S-03-0732 MCE CMK P

vs.

J.M. BRIDDLE, et al.,

Defendants.

ORDER

_____/

Plaintiff, who is proceeding without counsel and in forma pauperis, seeks relief pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff's motion to amend his complaint and proposed amended complaint and plaintiff's notification that he has discovered an address for Tanya Knight, a defendant previously unserved in this action.

Background

Plaintiff filed his complaint in April 2003 against several defendants. All defendants were served, except for defendant John Doe # 5 and defendant Tanya Knight. Pursuant to the parties' stipulations, the court entered orders dismissing all the other defendants with prejudice. (Docs. 134 and 136.) In both orders, the court noted that defendants T. Night and John Doe # 5 remained as defendants.

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1 On February 10, 2006, the court entered an order denying plaintiff's request for
2 production of documents from defendants for use in identifying John Doe #5 because the record
3 revealed that defendants had previously identified John Doe # 5 as Dr. Nolan. (Doc. 137.)
4 Although plaintiff had rejected the defendants' identification of John Doe #5, the court found
5 that defendants had identified John Doe #5 as Dr. Nolan and that plaintiff therefore had
6 sufficient information to serve John Doe #5.

7 **Discussion**

8 Plaintiff seeks to amend his complaint. Pursuant to Rule 15, a party may amend the
9 party's pleadings after a responsive pleading has been served only by leave of the court or by
10 written consent of the adverse party. Fed. R. Civ. P 15(a). Leave to amend shall be freely given
11 when justice so requires. Accordingly, the court grant's plaintiff's motion to file a second
12 amended complaint.

13 The court also notes that this action has been filed since 2003 and plaintiff has yet
14 to serve defendants Knight and John Doe # 5 (now identified as Dr. Nolan). On February 23,
15 2006, plaintiff provided the court with notice that he had discovered a possible address for
16 defendant Knight. The court finds that plaintiff has enough information to identify and serve
17 John Doe #5.

18 **Conclusion**

19 In accordance with the above, IT IS ORDERED that:

- 20 1. Plaintiff's motion for leave to file a second amended complaint in granted;
21 2. The Clerk of the Court is directed to file plaintiff's proposed second amended
22 complaint, which was lodged on March 1, 2006;
23 3. The Clerk of the Court is directed to send to plaintiff two USM-285 forms,
24 along with an instruction sheet and a copy of the second amended complaint filed March 1,
25 2006; and

26 ///

1 4. Within thirty days from the date of this order, plaintiff shall complete and
2 submit the attached Notice of Submission of Documents to the court, with the following
3 documents:

4 a. Two completed USM-285 forms—one for defendant Tanya Knight and
5 one for defendant Dr. Nolan (who has been identified as John Doe #5)

6 b. Three copies of the endorsed second amended complaint filed March 1,
7 2006; and

8 c. Two completed summons forms. Plaintiff is cautioned that failure to
9 return these materials for service on the above named defendants may result in a
10 recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 4m.

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12 Dated: March 23, 2006

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14 /s/ Craig M. Kellison
15 Craig M. Kellison
16 U.S. Magistrate Judge
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff,
vs.

No. CIV

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form
_____ completed USM-285 forms
_____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff